

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
The Development of Operational,)
Technical and Spectrum Requirements)
For Meeting Federal, State and Local) WTB Docket No. 96-86
Public Safety Agency Communication)
Requirements Through the Year 2010)
)
Establishment of Rules and Requirements)
For Priority Access Service)

FEDERAL LAW ENFORCEMENT WIRELESS USERS GROUP'S
PETITION FOR RECONSIDERATION
AND CLARIFICATION

1. Pursuant to Section 405 of the Telecommunications Act of 1934, as amended¹ and Section 1.429 of the Commission's rules,² the Federal Law Enforcement Wireless Users Group (FLEWUG)³ respectfully requests reconsideration and modification of the Commission's First Report and Order *In the Matter of The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication*

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.429.

³ The FLEWUG comprises law enforcement and public safety officials from the Department of the Treasury, Department of Justice, Department of the Interior, Department of Agriculture, Department of Defense, Department of Health and Human Services, United States Postal Service, United States Postal Inspection Service, National Telecommunications and Information Administration, Federal Emergency Management Agency, Internal Revenue Service, Federal Bureau of Investigation, United States Secret Service, United States Coast Guard, United States Capitol Police, Drug Enforcement Administration, United States Park Police, Immigration and Naturalization Service, United States Customs Service, Bureau of Alcohol, Tobacco, and Firearms, United States Mint, National Communications System, Defense Information Systems Agency, National Security Agency, Federal Law Enforcement Training Center, Bureau of Engraving and Printing, United States Marshals Service, National

Requirements Through the Year 2010 (First Report & Order).⁴ The First Report & Order was published in the Federal Register on November 2, 1998, 63 FR 58645.

Background

2. In 1993, the Office of the Vice President issued a National Performance Review (NPR) report recognizing the need to improve public safety communications. The NPR, and a subsequent Memorandum of Understanding between the Department of Justice and the Department of the Treasury, formally established the FLEWUG. The membership of the FLEWUG consists of more than 30 Federal Departments and agencies with law enforcement and other public safety responsibilities. Key among the FLEWUG's objectives, is to plan and coordinate future, shared-use, wireless communications systems and resources. Toward this end, the FLEWUG supports: the development of shared-resource, shared-use wireless communications systems; the efficient use of spectrum; and interoperability, as needed, among local, state and federal public safety agencies.

3. Given the FLEWUG's charter, we have clear interests in the proceedings related to the First Report & Order, particularly with the service rules for the newly re-allocated public safety spectrum (i.e., 764-776/794-806 MHz).⁵ The FLEWUG, throughout the proceeding, has stressed that interoperability spectrum within this band should provide frequencies for both first responder scene of action and day-to-day interoperability needs, such as mutual aid operations

Institute of Standards and Technology, United States Forest Service, United States Fish and Wildlife Service, and Federal Bureau of Prisons.

⁴ See *In the Matter of The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WTB Docket No. 96-86, FCC 98-191 (rel. September 29, 1998).

⁵ The FLEWUG, to date, has actively engaged the Commission's comment process regarding WTB Docket No. 96-86. The FLEWUG filed Comments and Reply Comments to the Second NPRM for Public Safety. We are currently developing Comments to the Third NPRM. The FLEWUG has entered six ex parte filings to the record, including a filing delivered on July 17, 1998, by Associate Attorney General, Mr. Raymond Fisher.

and task force operations. The FLEWUG has urged the FCC to allow federal co-equal access with state and local users to this spectrum. The Federal agencies represented by the FLEWUG seek access to this spectrum for interoperability and shared system use only. The FLEWUG has also stressed that it is not interested in obtaining this spectrum strictly for federal use or to support federal-only systems. Rather, the FLEWUG advocates partnerships with state and local agencies on shared systems where applicable.

4. While the FLEWUG applauds the Commission for its decision to introduce sufficient regulatory flexibility within its rules to allow Federal access to the 700 MHz band for the purposes of shared systems and interoperability, two primary concerns remain.⁶ First, the FLEWUG believes that the adjustments to the administrative provisions for regional planning are insufficient to adequately address known short falls.⁷ Second, the FLEWUG believes that the administration provisions for national planning, specifically the responsibilities of the NCC, should be reconsidered to strengthen its oversight and decision-making authority.⁸

5. In submitting this petition, the FLEWUG seeks clarification on the eligibility provisions of Section 2.103(b) of the Commission's rules.⁹ The FLEWUG interprets the provisions as allowing co-equal access to Federal Government entities under certain conditions to the channels in the 764-776 MHz and 794-806 MHz band. The FLEWUG also seeks reconsideration of the administrative provisions for regional planning;¹⁰ the administrative

⁶ First Report & Order at paragraphs 60-69.

⁷ *Id.* at paragraphs 83-89.

⁸ *Id.* at paragraphs 90-94.

⁹ 47 C.F.R. § 2.103(b); *See* First Report & Order at Appendix E, E-1.

¹⁰ *See supra* footnote 4.

provisions for national planning;¹¹ the establishment of a common frequency coordinator database;¹² the adoption of receiver standards;¹³ and the band plan.¹⁴

Co-Equal Access for Federal Users

6. The FLEWUG applauds the Commission for its decision to introduce sufficient regulatory flexibility to allow co-equal access to the channels in the 764-776 MHz and 794-806 MHz bands to Federal Government entities under certain conditions.¹⁵ The FLEWUG interprets the new provisions of Section 2.103(b) of the Commission's rules as establishing the terms under which co-equal access will be granted, generally.¹⁶ The FLEWUG interprets these new provisions

¹¹ See *supra* footnote 8.

¹² First Report & Order at paragraphs 99, 100.

¹³ *Id.* at paragraphs 118-121.

¹⁴ See 47 C.F.R. § 90.531(a) (referencing the First Report & Orders change to Section 90.531 at Appendix E-5).

¹⁵ See First Report & Order at paragraph 68 (stating that "Federal entities are ineligible for Commission licensing in the 700 MHz band, they are eligible to receive authorization to use this spectrum in accordance with the requirements set forth in Section 2.103 of our rules for Government use of non-Government spectrum").

¹⁶ See *supra* footnote 7. Section 2.103 of the Commission's rules now states:

- (b) Government stations may be authorized to use channels in the 764-776 MHz and 794-806 MHz public safety bands with non-Government entities if the Commission finds such use necessary where:
1. The stations are used for interoperability or part of a Government/non-Government shared or joint-use system;
 2. The government entity obtains the approval of the non-Government (State/local government) licensee(s) or applicant(s) involved;
 3. Government operation is in accordance with the Commission's Rules governing operation of this band and conforms with any conditions agreed upon by the Commission and the National Telecommunications and Information Administration; and
 4. Interoperability, shared or joint-use systems are the subject of a mutual agreement between the government and non-government entities. This section does not preclude other arrangements or agreements as permitted under Part 90 of the Rules. See 47 CFR §§ 90.179 and 90.421.

as including the authorization of federal stations to operate for interoperability purposes or as part of a shared or joint-use system operated under the terms of partnership between federal entities and the state and/or local entities that hold the licenses.¹⁷

7. The FLEWUG further understands that the new provisions of Section 2.103 of the Commission's rules now include: federal entities obtaining the approval of the licensees for co-equal use of the channels; federal operations being in accordance with affiliated FCC rules and conditions agreed by the Commission and the NTIA; and the interoperable, shared, or joint-use systems being subject to a mutual agreement (e.g., memorandum of understanding) between the federal entities and the state and/or local entities. The FLEWUG respectfully requests the Commission to affirm the FLEWUG's understanding of the provisions of Section 2.103(b) as described in this paragraph.

8. The FLEWUG praises the Commission for its decision to allow federal partnerships in state and local systems by creating a more flexible regulatory environment. The FLEWUG believes the development of interoperable, shared, or joint-use systems is a critical element to realizing significant improvements in public safety communications, such as those sought by the Public Safety Wireless Network (PSWN) program.¹⁸ The FLEWUG believes these

¹⁷ *See Id.* at paragraph 69 (quoting that “if a state or local government licensee desires for a Federal public safety entity to receive access to some or all of its licensed frequencies, the licensee can join in the request, under the NTIA/FCC process, to authorize Federal use of its non-government frequencies for noncommercial public safety services”).

¹⁸ The Public Safety Wireless Network (PSWN) program is a federal initiative operating on behalf of all local, state, and federal public safety agencies. The Department of Justice and the Department of the Treasury are jointly leading the PSWN program efforts to plan and foster interoperability among public safety wireless networks. The PSWN program is a 10-year National Partnership for Reinventing Government (NPRG) initiative. The NPRG, previously known as the National Performance Review (NPR), is an effort to reengineer how government provides services to citizens through more effective use of information technology and through more concerted partnership efforts among government at all levels. Consistent with the NPRG, and in concert with the public safety community, the PSWN program hopes to achieve a shared vision of interoperability—seamless, coordinated, and integrated public safety communications for the safe and efficient protection of life and property.

types of solutions are increasingly common solutions reached by public safety agencies from different jurisdictions and disciplines.¹⁹

9. In light of these considerations, the FLEWUG is of the understanding that the terms of obtaining co-equal access will be specified as part of the partnership agreements in force among the federal and the state and/or local entities jointly operating the interoperable, shared, or joint-use systems in question under Section 2.103(b)(4) of the Commission's rules. The FLEWUG further understands that the approvals granted under Section 2.103(b)(2) of the Commission's rules will remain in effect throughout the usable life of the systems in question. The FLEWUG anticipates that any agreements entered into regarding co-equal access and the operation of the affiliated interoperable, shared, or joint use systems will be long-standing and will not terminate unless and until the operation of the systems in question cease under terms agreed to by all system partners. The FLEWUG respectfully requests the Commission to affirm the FLEWUG's interpretation of Section 2.103(b)(2) as well as the FLEWUG's expectations regarding the terms and conditions of the enabling system partnership agreements.

Reconsideration of Administration Provisions for Regional Planning

10. The FLEWUG is concerned that the Commission has expanded the scope of the regional planning process without taking sufficient steps to address the known shortfalls of this

The PSWN program is developing partnerships and working closely with the public safety community throughout the first five-year phase of the program to develop a comprehensive implementation plan for interoperability among wireless networks. The program is currently entering its third year and will soon approach the halfway mark of its first phase. During the second five-year phase, the program activities will assist the public safety community in its implementation of the plan. More information about the PSWN program, its products, and its accomplishments are available on the PSWN program web page at www.pswn.gov.

process. Specifically, the FLEWUG takes issue with the Commission's failure to address directly the federal participation in the RPCs and the Commission's failure to consider suggestions to establish a workable dispute resolution process. In addition, the FLEWUG contends that the Commission should provide funding for RPC operations. The Commission should address these shortcomings, set forth in more detail below, in a reconsideration order to ensure that the regional planning process is a viable method of frequency management.

11. *Use of Regional Planning Process.* At the outset, the FLEWUG respectfully requests that the Commission reconsider its interpretation of the record and the extent to which the record demonstrates a "majority of the commenters' assessment that the regional planning approach has, for the most part, succeeded" in its use to date.²⁰ The FLEWUG respectfully submits that the majority view is not necessarily represented by the comments of the parties cited by the Commission.²¹ Instead, the Commission should have given more weight to the comments filed by the FLEWUG²² and others,²³ including the Joint Commenters,²⁴ who have raised significant reservations about the regional planning process.

¹⁹ Reference PSWN Program Symposium Compilation Report.

²⁰ First Report & Order at paragraph 78.

²¹ *See Id.* at paragraph 78, n.199. The twelve commenters referenced by the Commission are IACP; the City of Richardson, Texas; Motorola; the State of California; the City of Fort Lauderdale, Florida; the County of Alameda; NPSPAC Regional Review Committee, Region 49; NPSPAC Region 6 Regulatory Review Committee; Brazos County Emergency Communications District; American Red Cross; the City of Long Beach, California; and the California Public Safety Radio Association.

²² *See* FLEWUG comments at 17 (federal agencies must be allowed to participate in regional planning process); comments at 18 (lack of government funding prevents public safety community from participating fully in regional planning process); comments at 19 ("super-regions" should be created to support RPCs); reply comments at 8 (national oversight of RPCs is critical to the success of regional planning approach).

²³ *See, e.g.*, APCO International comments at 2 and reply comments at 3; Joint Commenters comments at 6; NLC comments at 3; City of Richardson, Texas comments at 3; and Commonwealth of Pennsylvania comments at 9.

12. Together, the Joint Commenters and the FLEWUG represent significant portions (e.g., fire agencies, highway safety officials, environmental protection officials, federal public safety entities) of the public safety community not well represented among the comments upon which the Commission relies. Consequently, the Commission may have under-represented the views of significant components of the public safety community when arriving at its assessment of the efficacy of regional planning. The FLEWUG respectfully requests the Commission reconsider its interpretation of the record and conclude that significant reform of the regional planning process is needed. Such reform is necessary if the regional process is to continue as a viable frequency management construct and if it is to be used as the means for assigning general use frequencies from the 700 MHz band.

13. Two common criticisms of the regional planning process are that it is not adequately inclusive of the broad public safety community,²⁵ and that the RPCs have been dominated by law enforcement agencies to the exclusion of other public safety officials.²⁶ It is important for the Commission to weigh more carefully the comments of the Joint Commenters, the FLEWUG, and others who have documented deficiencies with the RPC process. Many of those commenters who favor the RPC process have vested interests in retaining the regional planning process as it currently exists. In addition, the entities cited by the Commission represent

²⁴ “Joint Commenters” refers to the group that consists of the following members: American Association of State Highway and Transportation Officials, Forestry Conservation Communications Association, International Association of Fire Chiefs, Inc., International Association of Fish and Wildlife Agencies, International Municipal Signal Association, and National Association of State Foresters.

²⁵ See FLEWUG comments at 18; Joint Commenters reply comments at 5. See also NLC reply comments at 3; State of California reply comments at 32; NPSTC reply comments at 32.

²⁶ FLEWUG comments at 12. See also PSWN program 800 MHz Summary Report at 6 (finding that large portions of committee memberships consist of law enforcement agencies from large metropolitan areas).

only a small fraction of the 55 planning regions.²⁷ Thus, it would appear that the Commission may have oversold the success of the RPC process by inadequately balancing all of the views represented in the record. Accordingly, the FLEWUG requests that the Commission reassesses the record on this issue and make suggested modifications set forth below.

14. *Modification of Regional Planning Process.* At a minimum, the Commission must reevaluate the RPC process before implementing this process as a method of managing the 700 MHz spectrum. In light of the very real deficiencies in the RPC process identified on the record, the FLEWUG respectfully requests that the Commission reconsider the extent of the modifications to the regional planning process it set forth in the First Report & Order. In our view, the modifications made by the Commission are inadequate to create a workable regional planning approach. The FLEWUG has extensive evidence that the RPC process is flawed and we respectfully request that the Commission should take additional steps, based on the suggestions of commenters in this record, to improve the regional planning process that the Commission seeks to implement.

15. *Establishment and Operation of 700 MHz RPCs.* In the First Report & Order, the Commission states that “the 700 MHz band RPCs are organizations separate and distinct from the existing 800 MHz band RPCs.”²⁸ However, the Commission concludes that a 700 MHz committee may be the same as an 800 MHz committee, depending upon the boundaries and administration selected.²⁹ The FLEWUG believes these are contradictory points and that allowances for forming the 700 MHz RPCs anew must be made, because the eligibility rules for

²⁷ See First Report & Order at Appendix D for a list of regions.

²⁸ First Report & Order at paragraph 78.

²⁹ *Id.* at paragraph 81.

the 700 MHz band are different from those in the 800 MHz band. In particular, state and local government entities are authorized to hold licenses without the need to demonstrate specific public safety mission responsibilities. In addition, non-governmental organizations, under certain specific conditions, are also eligible to hold licenses. Further, federal agencies have been granted co-equal access for interoperability, shared or joint use systems.

16. Each of these provisions distinguishes the terms and conditions associated with 700 MHz use from those associated with 800 MHz use. As such, each of the provisions indicates the need for distinct 700 MHz RPCs that allow for a broader membership complement. However, the FLEWUG is concerned that provisions in the First Report & Order regarding the initial operations of the 700 MHz RPCs preclude them from being distinct from the 800 MHz RPCs³⁰.

17. *Inclusion of Federal Participants on 700 MHz RPCs.* The FLEWUG believes strongly that at least one representative from the Federal Government must be included on each 700 MHz RPC. The Commission does not address the possibility of federal representation on the RPCs, but it is crucial for each RPC to have a federal member in order to ensure that the goals of section 2.103(b) are met.³¹ The FLEWUG respectfully requests that the Commission clarify how the shared federal and non-federal use of the bandwidth envisioned in section 2.103(b)³² can be accomplished without meaningful federal participation in the regional planning process. The FLEWUG submits that each RPC must have at least one federal member with real authority, as opposed to observer status or otherwise serving in an adjunct role. Moreover, in order to ensure the most equitable representation and participation, the FLEWUG should be given the

³⁰ *Id* at paragraph 86.

³¹ 47 C.F.R. § 2.103(b).

³² *See supra* paragraph 7.

responsibility of naming a federal participant to each RPC. As the entity that represents the key federal public safety interests, the FLEWUG is uniquely situated to select federal representatives that will best serve the RPC.

18. *Definition of Regional Boundaries.* The FLEWUG feels strongly that the regional planning approach implemented for the 700 MHz must be remodeled to follow state geographic boundaries. Although the FLEWUG has in the past concurred with the existing regional approach, we acknowledge a trend toward statewide system development that may lead to a “network-of-networks” linking federal users to state users and state users to local users. As such, regional boundaries based on state geographic boundaries would be more conducive to the prevailing trend. Accordingly, we urge the Commission to reconsider its conclusion that the existing regional boundaries used for the 800 MHz band, in which some states are covered by multiple-state regions, should be used as the regional boundaries for the 700 MHz band.

19. The FLEWUG’s concern stems from problems that have arisen in multi-state regions. The Commission has acknowledged that such problems have hampered coordination of statewide channel assignments, but the FLEWUG believes that the “opt out” solution set forth in the First Report & Order is insufficient to address these problems.³³ It has been documented that many 800 MHz RPCs disbanded or have become inactive after their regional plan was approved.³⁴ Therefore, it is unreasonable to expect that state representatives who wish to opt out of their regions will be able to convene the RPC within 120 days of the effective date of the First Report & Order. In fact, the Commission notes that public notice must be given at least 60 days prior to

³³ First Report & Order at paragraphs 85-86.

³⁴ PSWN program 800 MHz Study at Appendix C, p. 32-33.

the initial meeting.³⁵ Thus, as a practical matter, the evidence suggests that states will generally be unable to utilize the opt out procedure set forth in the First Report & Order to reconfigure their regions according to state boundaries.

20. The FLEWUG urges the Commission to readjust the regional approach so that no state is included in multiple regions and thus split among regions. Regions 8, 20, 28, and 54 would be impacted by this suggested change. Specifically, these regions should be realigned so that the following states are no longer part of multi-state regions: Connecticut, Illinois, Indiana, Michigan, New Jersey, New York, Pennsylvania, Virginia, and Wisconsin.³⁶

21. *Establishment of a Dispute Resolution Process for Regional Planning.* The FLEWUG respectfully requests that the Commission reconsider the revised elements it established for 700 MHz regional plans to include a mechanism for resolving disputes between or within regions. There is no evidence that the regional planning approach set forth in the First Report & Order will prevent the types of conflicts that currently exist among the 800 MHz band RPCs.³⁷ Because federal agencies have a keen interest in region-to-region coordination and intra-region accord, the FLEWUG must respectfully request that the Commission reconsider the need for mandating appropriate dispute resolution mechanisms.

22. In the First Report & Order, the Commission places the onus of reaching consensus on neighboring RPCs. By requiring letters of concurrence signed by the chairperson of adjacent regions to be submitted to the Commission with a region's modification request, the Commission has virtually guaranteed that there will be delays in submitting regional plans and

³⁵ First Report & Order at paragraph 86, n.220.

³⁶ See First Report & Order at Appendix D.

³⁷ See *id* at paragraph 79 citing Joint Comments at 5.

modifications while RPCs attempt to solve cross-border interference problems or other disputes. The Commission's First Report & Order relies on voluntary national guidelines implemented by a national committee to alleviate regional disputes.³⁸ Without a third-party mediation process, however, region-to-region and intra-region conflicts likely will persist. Accordingly, the FLEWUG urges the Commission to reconsider its decision to defer completely to neighboring RPCs to resolve their own disputes and provide the proposed National Coordination Committee (NCC) with adjudication authority.

23. Because it is crucial that regional plans and plan modifications be adopted in a timely fashion, the FLEWUG believes that the Commission's regional planning approach must include a third-party dispute resolution provision. Specifically, the FLEWUG recommends that the Commission reconsider the limitations placed on the NCC and require that a national mediation board be established from a working group of the NCC. The Commission could either empower the NCC with the authority to resolve disputes or retain such authority with the Commission. The FLEWUG believes that the NCC should be charged with moderating disputes between the RPCs.

24. Finally, the Commission must seriously consider the need for national oversight of RPCs in order to avoid delay in adopting regional plans due to disputes within and among regions. The FLEWUG applauds the Commission's decision to form a national committee, but believes that it missed the opportunity to create a dispute resolution mechanism. By establishing a national committee that has no oversight responsibilities, the Commission has effectively limited the committee's ability to resolve regional disputes. The FLEWUG respectfully requests that the

³⁸ First Report & Order at paragraph 91.

Commission provide the NCC with the authority to resolve disputes between and within regional committees.

25. *Provision of Funding for RPC Operations.* The FLEWUG also respectfully requests that the Commission clarify how RPCs will be funded. The Commission has added several additional responsibilities to the RPCs, further exacerbating the lack of funding for the regional planning process. Further, the Third NPRM contemplates additional duties that may be imposed upon already burdened RPCs.³⁹ Although the FLEWUG⁴⁰ and other commenters⁴¹ raised the need for funding for RPCs, the Commission did not address this important issue in the First Report & Order.

26. As the FLEWUG pointed out in its comments, many public safety entities, especially small agencies, are unable to participate fully in the regional planning process due to lack of funding.⁴² The FLEWUG urges the Commission to evaluate the very real concern that RPCs will be unable to fulfill the expanding obligations imposed on them due to a lack of funding. The Commission continues to delegate responsibility to RPCs and to rely upon the RPCs to perform significant Commission business. The FLEWUG contends that RPC operations are, therefore, a fiduciary responsibility of the Commission. The FLEWUG urges the Commission to reconsider the record on this issue and determine that federal funding provided by the

³⁹ See, e.g., Third NPRM at paragraph 206 (proposal to require RPCs to describe the state of Y2K readiness of licensees in their region).

⁴⁰ FLEWUG comments at 18; reply comments at 43.

⁴¹ See NPSTC comments at 32; City of Richardson, Texas comments at 3; State of California comments at 33; City of Long Beach, California comments at 5; NLC comments at 6; CPRA comments at 4.

⁴² FLEWUG comments at 18. See also PSWN program 800 MHz Study at Appendix D, p.12 .

Commission is essential to the success of the regional planning approach of administering bandwidth for public safety purposes.

27. *Increasing Dependence on RPCs.* The FLEWUG is concerned about the general direction the Commission is pushing the regional planning process. The FLEWUG respectfully submits that the voluntary, unfunded, informal, and unevenly implemented regional planning process is not an appropriate governing response to the high priority, nationally critical public safety matters vested in 700 MHz band operations. Without allocating a single dollar of federal funding to support RPC operations, the Commission has imposed increasing responsibilities on RPCs, which are composed of volunteers. The Commission has elected to extend the use of the regional planning process to the general use portion of the 700 MHz spectrum with only minor modifications that fail to adequately address the shortcomings raised previously by the FLEWUG. Additionally, the Commission proposes, in the Third NPRM, the use of the regional planning process as a mechanism for: administering the 2.6 MHz of interoperability spectrum established in the First Report & Order;⁴³ managing the reserved 8.8 MHz of spectrum;⁴⁴ and collecting information regarding Year 2000 readiness among public safety agencies.⁴⁵ Further, the Commission relinquished governing responsibility for regions that do not have active planning committees to the public safety frequency coordinators,⁴⁶ which have financial interests in how public safety spectrum is managed. The Commission should not continue to depend upon RPCs to accomplish tasks that fall within the Commission's mandate without addressing the numerous

⁴³ Third NPRM at paragraph 184.

⁴⁴ Third NPRM at paragraph 173.

⁴⁵ Third NPRM at paragraph 206.

⁴⁶ First Report & Order at paragraph 89

shortfalls associated with the RPCs and without providing the NCC with sufficient oversight authority for the RPCs.

Reconsideration of Administration Provisions for National Planning

28. The Commission in the First Report & Order states that one of its primary goals is for seamless interoperability to occur on a nationwide basis.⁴⁷ The FLEWUG along with a number of other commenters in this proceeding agree with the Commission and strongly support the need for national planning for the interoperability portion of the new spectrum and for the general use spectrum.⁴⁸ The FLEWUG, however, wishes to express the following concerns over the Commission's determinations regarding national planning, those concerns center on: the membership of the NCC, the need for the NCC to maintain two agendas (one for interoperability, the other for general use), the limitations placed on the NCC by the FCC (in particular, not providing the NCC with oversight authority), the lack of any certain role in coordinating regional planning and the actions of the RPCs (such engagement of the NCC is voluntary on the part of the RPCs), and the appropriateness of the NCC obtaining accreditation for standards development.

29. *Establishment of a Single National Coordinating Body.* In regard to the establishment of a national coordinating body, the Commission held "that the establishment of a single national committee provides the best approach without duplication."⁴⁹ The FLEWUG

⁴⁷ First Report & Order at paragraph 5.

⁴⁸ *Id.* See, e.g., Brazos Comments at 2; Region 49 Comments at 2; APCO Comments at 3; CA/PSRA Comments at 2.

⁴⁹ First Report & Order at paragraph 93.

agrees and wishes to point out that the Commission has mischaracterized its position in the First Report & Order.⁵⁰ In the FLEWUG's Ex-Parte filing of June 16, 1998,

the FLEWUG stated its support for a national coordination body to oversee the entire 764-776/794-806 MHz band, provided that two agendas exist: one for interoperability, the other for general use. It is only through two separate agendas that the appropriate attention may be given both interoperability communications and general use communications.⁵¹

It has always been the FLEWUG's belief that the establishment of a national coordination body would not add an additional layer of bureaucracy, but rather a higher level of coordination.⁵² The FLEWUG, however, still has trepidations regarding the single national coordination body because of the complexities of the issues and the significant number of potential issues that a single committee would be required to address. In regard to interoperable communications issues, the national coordination body should focus on issues such as identifying the lowest common denominator for interoperable communications.⁵³ When dealing with general use communications issues, the national coordination body should focus on issues relating to the availability of spectrum for general use activities.⁵⁴ Thus, the FLEWUG hopes that with the proper Commission guidance, the NCC will approach its work with a structured means to fairly deal with both general use and interoperability matters. The FLEWUG, however, wishes to remind the Commission that serious consequences may potentially arise if failures occur regarding the inappropriate

⁵⁰ *Id.*

⁵¹ *See* the FLEWUG's Ex Parte letter of June 16, 1998. On June 15, 1998, representatives of the FLEWUG met with Mr. Daniel Phythyon, Ms. D'Wana Terry, and Ms. Kathryn Hosford of the Wireless Telecommunications Bureau.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

segregation or coordination of the two discrete sets of issues, interoperability and general use spectrum

30. *Membership of the NCC.* The FLEWUG agrees with the Commission’s decision “that a national coordination committee composed of a broad range of representatives of the public safety user community is appropriate.” The FLEWUG agrees and further references its comments, which state that the NCC should include all levels of the public safety community in order to fully represent the public safety community and its stakeholders. The FLEWUG believes that representative membership to the NCC should include a representative from the NTIA, the FLEWUG, and the PSWN program. The NTIA, the Federal Government spectrum manager and the principle advisor to the President on telecommunications policies pertaining to the Nation’s regulation of the telecommunications industry, is an obvious participant. The FLEWUG, which consists of law enforcement and public safety officials from throughout the Federal Government and is an advocate for efficient use of spectrum, shared-use, and interoperable systems, likewise, should be a participant. The PSWN program, which is planning and fostering interoperability among wireless networks that meet the requirements of local, state, and federal public safety, should also be a participant. Given the reasons stated above and the diverse and complementary interests represented by the NTIA, the FLEWUG, and the PSWN program, the NCC should provide membership for each of these interests. Thus, the FLEWUG looks forward to the opportunity to further elaborate on its views relating to the make-up of the NCC in the Commission’s imminent separate Public Notice on this issue.

31. *Provision of NCC Responsibilities for Oversight and Decision Making.* As the FLEWUG as stated above, it agrees with the Commission that a national committee is

warranted.⁵⁵ The FLEWUG also agrees with the Commission that the NCC should assist and augment the regional planning process.⁵⁶ However, the FLEWUG disagrees with the Commission's holding that the Commission should have oversight responsibilities, rather than the NCC.⁵⁷ The FLEWUG believes that the oversight responsibilities should reside in the NCC because it is in the public interest. The FLEWUG further believes that the Commission does not possess sufficient resources to provide the requisite degree of oversight and that it is in the Commission's interest to leverage the NCC toward this end. The FLEWUG fears that by not allowing the NCC to have oversight authority, the NCC will merely become a "paper tiger." Thus, the FLEWUG respectfully requests the Commission to reconsider the designation of the NCC as merely an advisory committee with no oversight or decision-making authority. Moreover, the FLEWUG contends that the duration of the NCC need not be limited to four years, because the Federal Advisory Committee Act allows for repeated extensions.⁵⁸

32. *Provision of NCC Responsibility for General Use Planning.* The FLEWUG also wishes to voice its concerns regarding the level of involvement and responsibility that the NCC will have over general use issues. It is the FLEWUG's hope that the NCC will address general use issues with the same level of involvement and responsibility as it will with the interoperability issues. In addition, the FLEWUG takes exception with the voluntary assistance provision of the proposed NCC responsibilities. This provision, which allows for the NCC to assist with developing coordinated regional plans, will not assure that guidelines for coordination developed

⁵⁵ First Report & Order at paragraph 92.

⁵⁶ *Id.*

⁵⁷ *Id.*

by the NCC will be followed.⁵⁹ Failure to follow such guidelines will frustrate and impede region-to-region interoperability. The FLEWUG believes that the NCC would benefit from maintaining a "general use" agenda as it works to develop guidelines for coordinated general use planning. It is the FLEWUG's fear that if the RPCs are not required to follow guidelines promulgated by the NCC, for the purposes of coordinating regional planning, then national planning for the general use 700 MHz spectrum will likely be no more effective than it was for the 800 MHz NPSPAC channels.

33. *Stipulation for ANSI Accreditation of the NCC.* Finally, the FLEWUG would like to express clear reservations regarding the NCC's assigned role in standards development processes and the ensuing stipulation that the NCC become ANSI-accredited⁶⁰. The FLEWUG disagrees with the Commission's proposal to look to the NCC to recommend interoperability digital modulation, trunking, and receiver standards⁶¹. The FLEWUG believes that the proposed NCC role in standards development will result in a duplication of effort with existing standards development⁶², may result in the development of incompatible standards, and could further delay the use of the 700 MHz band for public safety purposes. The FLEWUG believes that the

⁵⁸ *Id.* In fact the Commission states at footnote 233 that "advisory committees chartered under FACA can have terms of two years or less but charters can be renewed. See 5 U.S.C. App. 2 (1988). See Spectrum Planning and Policy Advisory Committee

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² An ANSI standard currently exists for digital interoperability. It is comprised of the ANSI/TIA/EIA-102.BAAA-1998, FDMA Common Air Interface (CAI) standard, approved by ANSI on April 15, 1998, and the ANSI/TIA/EIA-102.BABA-1998, Vocoder Description standard, approved by ANSI on May 5, 1998. Adherence to the same CAI and vocoder standards is essential for enabling one manufacturer's digital radio to communicate with that of another. The manufacture of interoperable digital 700 MHz radios for public safety could be facilitated immediately through the adoption of the existing TIA/EIA-102 standards.

adoption of existing TIA/EIA-102 standards for digital interoperability in the 700 MHz band is a more workable alternative.⁶³

34. The TIA/EIA standards currently address channels that operate within a 12.5 kHz channel bandwidth. The Commission has proposed a channel plan with 6.25 kHz as the base channel width for narrowband (e.g., voice) applications. On the surface, this seems like a contradiction with the TIA/EIA standard and a justification for pursuing a new or modified standard. However, for the interoperability channels, another consideration must be made. These channels need to support federal as well as state and local users. Currently there are no plans for federal users to migrate toward 6.25 kHz narrowband systems. Federal systems are migrating to 12.5 kHz. A "common denominator" approach is in order for the interoperability channels in 700 MHz, namely, the stacking of two adjacent 6.25 kHz channels, so that 12.5 kHz is the base channel width for interoperability purposes. Under this arrangement, the TIA/EIA-102 standards apply for digital interoperability at 700 MHz.

35. Notwithstanding the existence of applicable standards, the FLEWUG believes that ANSI accreditation for the NCC or one of its subcommittees for the purpose of establishing digital interoperability standards may not be possible, and, if possible would be resource intensive. It may not be possible because one of the critical determining factors is the existence of redundant

⁶³ The FLEWUG supports and has adopted, by vote, the TIA/EIA-102 as the digital interoperability standard for radio communications. The vote to support these standards was unanimous among the FLEWUG members participating in the vote. The voting agencies, by public vote or by proxy included: Department of the Treasury, Department of Justice, Department of the Interior, Department of Agriculture, United States Postal Inspection Service, National Telecommunications and Information Administration, Federal Emergency Management Agency, Internal Revenue Service, Federal Bureau of Investigation, United States Secret Service, United States Coast Guard, Immigration and Naturalization Service, United States Customs Service, Bureau of Alcohol, Tobacco, and Firearms, National Security Agency, Federal Law Enforcement Training Center, Bureau of Engraving and Printing, United States Forest Service, United States Marshals Service, United States Fish and Wildlife Service, and Federal Bureau of Prisons. The National Telecommunications and Information Administration, as a FLEWUG member and as the President's Principle Advisor in telecommunications matters, supports voluntary

standards development bodies and processes. An ANSI-certified NCC would be redundant to and maybe in conflict with the standing TIA TR8 Engineering Committee and its subcommittees. The standards process pursued by an ANSI-accredited NCC, would be redundant to the standing TIA/EIA-102 (Project 25) effort. In addition, the feasibility of the proposed role for the NCC in standards development is further called into question by the significant time and money it will take to obtain ANSI accreditation and to develop a new standard. Thus, the FLEWUG would like to urge the Commission to withdraw the proposed role of the NCC in the standards development process. Further, the FLEWUG would like to impress upon the Commission that it should support existing ANSI-certified digital interoperability standards and existing ANSI accredited entities to further facilitate the development of standards and guidelines to ensure consensus, due process, and openness. In addition, the FLEWUG wishes to remind the Commission that the Federal Government is required to adopt and use commercially approved standards.⁶⁴

Reconsideration of Administration Provisions for Frequency Coordination

36. *Establishment of a Common Coordinator Data Base.* The FLEWUG has a strong interest in ensuring that public safety frequency coordinators have the necessary tools to assign access to the 700 MHz band. The FLEWUG favors establishing a common coordinator database as a means of facilitating the work of the public safety frequency coordinators. In the First Report & Order, the Commission conclusion that “a common coordinator data base would be the best method for providing all coordinators with accurate up-to-date information needed to

industry standards and encourages federal agencies to adopt standards that promote interoperability. As such, NTIA endorses the FLEWUG's adoption of TIA/EIA-102.

formulate accurate frequency recommendations.”⁶⁵ The FLEWUG endorses this conclusion, but fails to see the logic in the Commission’s overall finding that the record indicates that a consolidated database is a not viable option.⁶⁶ Accordingly, the FLEWUG respectfully requests that the Commission reconsider the need for and viability of a common coordinator database.

37. The FLEWUG respectfully disagrees with the Commission’s statement that, because there is no evidence in the record that a frequency coordinator could create and maintain a common coordinator database, such a database should not be established. Frequency coordinators routinely use databases that are maintained by themselves or other organizations and possess the capabilities to create and use a common coordinator database. Notwithstanding these considerations, it is not necessary that the frequency coordinator build and maintain a common coordinator database. Qualified third party organizations could perform this function.

38. The FLEWUG believes that the benefits of a common coordinator database outweigh the effort required to maintain the database. Moreover, the FLEWUG opposes adoption of the notice and waiting-period provisions set forth in the Refarming Second Report and Order⁶⁷ because the Commission has not given commenters to this proceeding adequate opportunity to comment on the possibility of adopting this approach with respect to the administration of the 700 MHz band. In light of the Commission’s admission that a common

⁶⁴ “All federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical” See OMB Circular A-119 as amended February 10, 1998.

⁶⁵ First Report & Order at paragraph 100.

⁶⁶ *Id.*

⁶⁷ *Id. citing* Replacement of Part 90 by Part 88 to Revise the Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services, PR Docket No. 92-235, *Second Report and Order*, 12 FCC Rcd 14,307, (*Refarming Second Report and Order*) at 14,327.

coordinator database would be the “best method” for ensuring that frequency recommendations are accurate, the FLEWUG opposes the notice and waiting-period approach to managing information. The FLEWUG respectfully requests that the Commission reconsider its conclusion that establishing a common coordinator database is not a viable method of providing coordinators with accurate, timely information.

Reconsideration of Technical Requirements for the Nationwide Interoperability Channels

39. *Adoption of Receiver Standards.* The FLEWUG asks that the Commission reconsider its decision to have the NCC issue receiver standards.⁶⁸ The FLEWUG urges the Commission to reconsider its decision and adopt the long-standing, well-established receiver standard provisions, that are consistent with NTIA,⁶⁹ as established by Telecommunications Industry Association (TIA), and as adopted by both the user and vendor communities.⁷⁰ The NTIA’s Manual of Regulations and Procedures for Federal Radio Frequency Management provides an outline of such standards and sets minimum Federal Agency performance criteria.⁷¹ The TIA has set standards for analog and digital land mobile systems and is currently refining its

⁶⁸ First Report & Order at paragraph 121.

⁶⁹ In its comments, National Telecommunications and Information Administration (NTIA) states that “it has long been a proponent of receiver standards as a means for managing the radio spectrum effectively and efficiently.” See Comments of the NTIA filed on December 24, 1997, in this docket, at 12 (citing NTIA Reply Comments to the Notice of Proposed Rulemaking, *Part 87 of the Commission’s Rules to Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations*, Pr Docket No. 90-315 (Oct 1990) at 8; see also NTIA Reply Comments to the Notice of Proposed Rulemaking, *Amendment of the Commission’s Rules to Provide for Unlicensed NII/SUPERNET Operations in the 5 GHz Frequency Range*, ET Docket No. 96-102 (aug. 1996).

⁷⁰ See Comments of the NTIA filed on December 24, 1997, in this docket, at 12.

⁷¹ *Id.*

standards to include digital systems.⁷² In addition, the FLEWUG agrees with the NTIA that poor quality receivers could impede communications on the interoperability channels.⁷³ Thus, the FLEWUG advocates that these standards should also apply to general use as well as interoperability channels.

40. *Provisions of the Band Plan.* New developments with regards to Global Navigation-Satellite System (GNSS) warrant the need for the Commission to reexamine the band plan for the 764-776/794-806 MHz band. The band plan as adopted by the Commission allows for mobile and fixed transmissions in the 794-806 MHz band.⁷⁴ The FLEWUG opposes the Commission's band plan because it allows for mobile transmissions in the 794-806 MHz band. Allowing for mobile transmissions exacerbates possible interference with the GNSS band (1559-1605 MHz).⁷⁵ The FLEWUG recommends that the band plan for the 794-806 MHz band be changed to only allow fixed transmissions. Such a stipulation will limit possible interference with GNSS because fixed transmission sources are fewer in number, are of a known number, and are at known locations. The FLEWUG believes that mobile-to-base station transmissions should not be allowed in the upper segment of the new spectrum (794-806 MHz).

⁷² *Id.*

⁷³ *Id.* at 13.

⁷⁴ See First Report & Order at Appendix E, E-5. The Commission amended its rules under Section 90.531(a). 47 CFR § 90.531(a). Section 90.531(a) states:

(a) *Base and mobile use.* The 764-776 MHz band may be used only for base, mobile or fixed (repeater) transmissions. The 794-806 MHz band may be used only for mobile or fixed (control) transmissions.

⁷⁵ The FLEWUG realizes that the Commission was unable to address this issue adequately in the Second Notice of Proposed Rulemaking, 12 FCC Rcd at 17,778-17,779. Thus, we commend the Commission for seeking additional information in the Third Notice of Proposed Rulemaking (Third NPRM). See Third NPRM at paragraph 196.

41. The FLEWUG believes that, under certain conditions⁷⁶, public safety transmissions (fixed or mobile) in this band will interfere with GNSS operations unless appropriate emission criteria are adhered to. In light of the implications of these criteria, the FLEWUG believes that the needed solution is to confine the interference problem and to reduce the impact of the problem as much as practical. The FLEWUG recommends that this can be achieved by limiting the 794-806 MHz band to base station-to-mobile transmissions. This recommendation will reduce significantly the possibility of transmitters operating from multiple and unknown locations and thus confine the problem to fixed stations only. This coordination would be more complicated if several possible mobile transmitters were in the vicinity. It also reduces the impact of the problem with respect to the equipment modifications required to adhere to the emission limit criteria.⁷⁷ Slight increases in weight or size in base stations would be manageable. Similar changes to the handheld devices would be much more apparent and may be a hindrance to public safety operations. Thus, the FLEWUG respectfully requests that the Commission reconsider the band plan for the 764-776 and 794-806 MHz public safety bands and limit the 794-806 MHz band to base station-to-mobile transmissions. Moreover, the FLEWUG looks forward to the opportunity to elaborate further on this issue in the Third NPRM.

⁷⁶ Mobile transmissions in the 794-806 MHz band and within 100 feet of an aircraft while on final approach, which is a likely situation for public safety operations, could interfere with the aircraft critical radionavigation functions in the GNSS band. Based on this scenario, the NTIA has suggested appropriate emission limit criteria. In particular, the NTIA has suggested the second harmonic levels of public safety systems (mobile or fixed) transmitting in the 794-806 MHz band be subject to a -70 dBW/MHz emission limit criteria for wideband emissions and -80 dBW/700 Hz emission limit criteria for narrowband emissions. *See* Third NPRM at paragraph 197 and at Appendix G, G-1. The FLEWUG supports this determination because it believes public safety operations, and thus transmissions, do and will take place within the 100 feet separation distance. The FLEWUG also commends the Commission for its proposal to adopt the emissions limits requested by NTIA. *See* Third NPRM at paragraph 199.

⁷⁷ National Public Safety Telecommunications Council (NPSTC) asserts that in order to comply with the emission limit criteria "...radios could become costly, heavier, and larger than desired for public safety use." *See* Third NPRM at paragraph 198.

Conclusion

42. For the reasons set forth above, the FLEWUG respectfully requests that the Commission clarify, reconsider, and accordingly modify its decision in the First Report & Order to make it consistent with the views expressed herein.

Respectfully submitted,

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